IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3137 OF 2005

Akhilesh Spintex Pvt.Ltd. & anr. ... Petitioners
v/s.
Union of India & ors. ... Respondents

Mr.V.A.Thorat, Sr.Advocate with Mr.Vaibhav Joglekar i/by Mr.M.G.Gavade for petitioners.

Mr.N.D.Sharma for res.No.1.

Mr.Milind Sathe, Sr.Advocate with Mr.A.S.Doctor i/by Junnarkar & Asso. for res.No.5.

Mr.Pratik Sakseria with Mrs.Rajashree Rastogi i/by M.K. Ambalal & Co. for res.Nos.3 & 4.

CORAM : H.L. GOKHALE &
ABHAY S. OKA, JJ.

DATED : 10th January 2006

ORAL ORDER : (Per H.L.Gokhale, J.)

1. Heard the learned Counsel for the parties.

2. Leave to amend granted. Amendment forthwith.

3. The 2nd petitioner is a Director of petitioner No.1-Company. The first petitioner had given its bid in the sale of the assets of respondent No.7 which was being conducted through respondent No.3 which is a Reconstruction Company under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement

of Security Interest Act, 2002 ("the Securitisation Act" for short). The assets of respondent No.7 were sought to be sold by inviting bids. The minimum expected offer was for Rs.14 Crores and the offers were to be given by 21st November 2005. It appears that some 11 bidders who are called as "quoters" under the bid documents gave their offers. From amongst them, the petitioner was one whose offer was for Rs.15,01,00,000/-. Three out these were the highest bidders viz. one Proma Industries Ltd., Maxwell Ltd. and Jai Corp. Ltd. (i.e. respondent No.5 herein). They were subsequently called for further negotiations in which all three of them participated. They were asked to revise their offers and ultimately the 5th respondent, which gave the highest offer of Rs.19,25,00,000/-, was declared to be the successful bidder. The petitioners are aggrieved by this decision in favour of respondent No.5 and have filed the present Petition raising various contentions.

4. Mr.Thorat, learned senior Counsel appearing for the petitioners, submitted that this decision to accept the bid of respondent No.5 was arrived at on 23rd November 2005 and according to the petitioners, by the time that decision was

arrived at, the petitioners had given an offer of Rs.19.25 Crores. It is his submission that all the concerned parties ought to have been allowed to participate when they had otherwise satisfied the pre-qualifications of giving a bid of Rs.14 Crores. He further submits that the purpose of inviting bids is to obtain the best price and for that purpose he relies upon condition No.6 of the terms and conditions of the quotation. In his submission, condition No.7 under which the authorised officer (of respondent No.3) is given a right to conduct the sale in the manner deemed fit and to negotiate separately with the quoters is contrary to the relevant rules governing such sales which are the Security Interest (Enforcement) Rules, 2002. Various submissions are otherwise raised to challenge various provisions. However, petitioners' principal submission has been that if the object is to obtain the best price, all concerned parties who satisfy the pre-qualifications, ought to have been permitted to participate in the second round of negotiations.

5. Mr.Sakseria appearing for respondent Nos.3 and 4, on the other hand, submitted that all these conditions, including condition No.7 which is

sought to be disputed, are part of a complete document and the petitioners had accepted the entire terms and conditions of the quotation by their specific letter dated 20th November 2005. He points out that under Rule 8(5) of the aforesaid Rules, there are four methods by which sale of the immovable property can be arranged. In the instant case, respondent No.3-Asset Reconstruction Company has resorted to the first one viz. obtaining quotations from the persons dealing with similar secured assets. The terms were made known to all the participants. As far as the petitioners are concerned, they have expressly accepted those terms by their letter dated 20th November 2005. He submits that restricting the negotiations for a revision to the highest three bidders was fully permissible under condition No.7. Mr.Sakseria further pointed out that besides that the offer given by the petitioners was also not an unconditional one and even when a revised offer was sought to be given on 23rd November 2005, it was stated in the offering letter that the petitioners had negotiated with Canara Bank, Kandivali, to enable them to make the entire payment in a desired time. He submits that independently also in view of such a conditional acceptance, respondent No.3 would

have been entitled to reject the offer straightway. That apart, he disputes the fact that this offer of petitioners had reached respondent No.3 on 23.11.2005 before the time when the decision in favour of respondent No.5 was arrived at, which is otherwise also the highest offer. He, therefore, submits that there is no reason to interfere in the decision which respondent No.3 has arrived at.

6. Mr.Sathe, learned senior Counsel appearing for respondent No.5, pointed out that the offer of respondent No.5 having been already accepted, respondent No.5 has made the full payment and has taken over the possession of the concerned property on 24th November 2005 and on 5th December 2005 the necessary registration of the documents has also been effected.

7. We have considered the submissions of the learned Counsel appearing for the petitioner as well as for the respondents. In our view, respondent No.3 has followed the procedure which is fully permissible under the law. Obtaining quotations from the persons dealing with similar secured assets is permissible under Rule 8(5)(a) of the relevant Rules. These are statutory rules

framed under Section 38 read with Section 13 of the Securitisation Act. Rule 8(8) deals with sale by any method other than public auction or public tender and it provides that it shall be on such terms as may be settled between the parties in writing. The power to further negotiate after initial offers are received was specifically reserved in clause (7). That clause of the terms and conditions was accepted by the petitioners before giving the bid. That apart, even as per the bid given by the petitioners, (which according to respondent No.3 had not reached them in time) their offer is for Rs.19.25 Crores, whereas the offer of respondent No.5, which has been accepted, is also of Rs.19.25 Crores. Respondent No.3 was within its rights to shortlist from amongst the various quoters. They were in all 11. Out of them, 10 applicants were found eligible. For further negotiations, respondent No.3 selected three highest bidders and thereafter negotiated with them. Respondent No.3 had ultimately to sell the property to only one party and for that purpose if they shortlisted the three highest bidders, they could not be faulted for not involving the 10 initial qualifiers in the second round. This was ultimately with a view to see to it that the debt is recovered by securing the best

price by sale of the debtor's property. There is nothing contrary to law and/or in any way unfair or unjust on merits in the decision arrived at by respondent No.3. The petition is, therefore, rejected.

8. When this Petition was heard earlier on 28th December 2005 in vacation, a statement was made by the Counsel for respondent No.5 that respondent No.5 will not create any third party interest in respect of the property for a period of two weeks. Mr.Thorat appearing for the petitioners makes a request that this statement be extended by further four weeks. Mr.Sathe appearing for respondent No.5 states that he does not have any instructions to make any such statement and particularly because in his submission the petitioners have no right whatsoever. We quite see merit in the submission of Mr.Sathe. However, with a view not to prejudice the remedy of the petitioner in case he wants to avail of one further, we direct that respondent No.5 will not create third party rights in the concerned property for a period of four weeks hereafter.

9. Without prejudice to the aforesaid

request, a further request is made by Mr.Thorat that the goods of the petitioners lying in the property be released to petitioner No.2. Mr.Sathe makes a statement that on such an application of the petitioners being forwarded by respondent No.3 to respondent No.5, the goods will be released by them forthwith.

10. Petition is rejected.

(H.L. GOKHALE, J.)

(ABHAY S. OKA, J.)